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नई दिल्ली, शनिवार, नवम्बर 13, 1993/कार्तिक 22, 1915

No. 33]

NEW DELHI, SATURDAY, NOVEMBER 13, 1993/KARTIKA 22, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (III)

PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications Issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 अक्टूबर, 1993

आ.प्र. 119.—निर्वाचन आयोग का समाधान हो गया है कि 278-मधोरा विधान सभा निर्वाचन क्षेत्र में 1989 में आन्ध्र प्रदेश विधान सभा के माध्यम निर्वाचन में निर्वाचन लड़ने वाले अभ्यर्थी श्री कादियाला प्रसाधु, सखुनावीदु(वी), येरुपालेम मंडल, सम्मम जिला, आन्ध्र प्रदेश लोक प्रतिनिधित्व अधिनियम 1951 और उसके अधीन बनाये गए नियमों के अधीन अवेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असमर्थ रहे।

और, उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदन पर, यदि कोई हो, विचार करने के पश्चात निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित नहीं है;

अतः, अब निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अन्सरण में श्री कादियाला प्रसाधु को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है :

[सं 76/आ.प्र.—वि.स./93(4)]

आदेश से,

वलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th October, 1993

O.N. 119.—Whereas, the Election Commission is satisfied that Shri Kadiyala Prasadh, Sakhunaveedu (V), Yerrupalem Mandal, Khammam District, Andhra Pradesh, a contesting candidate at the General Election to the Andhra Pradesh

Legislative Assembly, 1989 from 278-Madhira Assembly Constituency has failed to lodge an account of his election expenses as required under the Representation of the People Act, 1951 and the Rules made thereunder.

And, whereas, the said candidate has not either furnished any reason or explanation for the said failure even after due notice, or the Election Commission, after considering the representation made by him, if any, is satisfied that he has no good reason or justification for the said failure.

Now, therefore, in pursuance of Section 10-A of the said

Act, the Election Commission hereby declares Shri Kadiyala Prasadhu to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of 3 years from the date of this order.

[No. 76/AP-LA/93 (4)]

By Order,

BALWANT SINGH, Secy.

आदेश

नई दिल्ली, 7 अक्तूबर, 1993

आ. अ. 120.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट विधानसभा के उप निर्वाचन, 1993 के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा समय के अन्तर्गत और/अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है ;

और, उक्त अभ्यर्थियों ने सम्प्रदा सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यावहारिक नहीं है ;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्र. सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4	5
1.	आंध्र प्रदेश विधान-सभा के लिए साधारण निर्वाचन, 1993	152 - रायाचोटी विधानसभा निर्वाचन क्षेत्र	श्री पालेटी देरंगुला, 2/12 कोन्डावन्दलापाल्ले नारायणारेड्डीपाल्ले पोस्ट - साम्बेपाल्ले मंडल, कुड्डापाह जिला, आंध्र प्रदेश।	लेखा विलुप्त दाखिल नहीं किया।
2.	-वही-	-वही-	श्री रंगारेड्डी पेराडोड्डी पोन्नेसावन्दलापाल्ले साम्बेपाल्ले मंडल, कुड्डापाह जिला, आंध्र प्रदेश।	-वही-
3.	-वही-	-वही-	श्री राजेन्द्र घट्टामनेनी, अड्डाविकाम्मापाल्ले, मकान सेट्टीपाल्ले, साम्बेपाल्ले मंडल, कुड्डापाह जिला, आंध्र प्रदेश।	-वही-
4.	-वही-	-वही-	श्री संजीवा रेड्डी बेल्लम, पोटरेड्डीगारीपाल्ले, मकान दुगयाला, साम्बेपाल्ले मंडल, कुड्डापाह जिला, आंध्र प्रदेश।	-वही-

[सं. 76/आ. प्र. - वि. स./93/उप्र (1-4)]

आदेश से,

बलवन्त सिंह, सचिव

ORDER

New Delhi, the 7th October, 1993

O.N. 120.—Whereas, the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the bye-election, 1993 to the Legislative Assembly specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses in time/or in the manner prescribed by law or has not lodge the account at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice, or the Election Commission, after considering the representation made by them, if any, is satisfied that they have no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union territory for a period of 3 years from the date of this order.

S.No.	Particulars of election	Sl. No. & Name of Constituency	Name & Address of Contesting Candidates	Reason of disqualification
1	2	3	4	5
1.	Bye-Election to Legislative Assembly-1993 Andhra Pradesh	152-Rayachoty Assembly Constituency	S/Sh. Paleti Derangula, 2/12 Kondavandlapalle, Narayanareddipalle Post, Sambepalle Mandal, Cuddapah Distt., Andhra Pradesh.	Account not lodged at all.
2.	-do-	-do-	Ranga Reddy Yerradoddi, Ponnalavandlapalle Sambepalle Mandal, Cuddapah District Andhra Pradesh.	-do-
3.	-do-	-do-	Rajendra Ghattamaneni, Adavikammappalle, H/o Settipalle, Sambepalle Mandal, Cuddapah District, Andhra Pradesh.	-do-
4.	-do-	-do-	Sanjeeva Reddy Bellam, Potreddigarippalle, H/o Dudyala, Sambepalle Mandal, Cuddapah District. Andhra Pradesh.	-do-

[No. 76/AP-LA/93/Bye(1-4)]

By Order,

BALWANT SINGH, Secy.

नई दिल्ली, 27 अक्टूबर, 1993

New Delhi, the 27th October, 1993

आ.प्र. 121:—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1988 की निर्वाचन अर्जी संख्या 1 में श्रीनगर स्थित जम्मू और कश्मीर के उच्च न्यायालय के 15 अक्टूबर, 1992 के निर्णय को एतद्वारा प्रकाशित करता है।

O.N. 121.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated the 15th October, 1992 of the High Court of Jammu and Kashmir Srinagar in Election Petition No. 1 of 1988.

[संख्या 82/ज.औरक.-ली.स./1/88]

[No. 82/J&K-HP/1/88]

आदेश से,

By order,

घनश्याम खोहर, सचिव

GHANSHYAM KHOHAR, Secy.

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

PRESENT :

The Hon'ble Mr. Justice K. K. Gupta.

E.P. 1 of 1988

Bhim Singh Vs. Mohd. Ayub Khan and ors.

Mr. J. P. Singh.

Mr. R. P. Bakshi.

Parliamentary constituency No. 5-Udhampur fell vacant on the death of Shri G. L. Dogra, M.P. and Election Commission of India in order to fill the said seat issued notification on May 16, 1988 for holding bye-election. Petitioner filed his nomination as a candidate of J&K Panther Party whereas respondent No. 1, Shri Mohd. Ayub Khan filed his nomination papers as a candidate of Indian National congress. Election was held and respondent No. 1 was declared elected. The petitioner has by way of this election petition challenged the said election of respondent No. 1 on various grounds, including competency of Election Commission of India to order for repoll and corrupt practices. Respondent No. 1, who only contested the petition, refuted the allegations of the petitioner and this Court on February 17, 1989 framed the following issues :—

1. Whether the documents namely petition, schedule and annexures annexed with the petition and the affidavit have been verified according to law ? OPP
2. Whether the order of Chief Election Commission of India dated 25-6-1988 amounts to non-compliance of election rules and Representation of People Act and whether it has materially affected the result ? OPP
3. Whether the act on the part of the authorities concerned at the instance of respondent No. 1 to shift the ballot boxes of 14 polling stations of Gulabgarh segment to Rajouri which is outside the jurisdiction of Udhampur Parliamentary constituency and then shifting the said ballot boxes to Udhampur before bringing them to Kathua the venue of counting, after three days from the date of poll amounted to corrupt practices ? OPP
4. Whether the petitioner can be declared elected on the basis of the total number of valid votes polled in favour of the petitioner at the end of counting of all 15 segments on the intervening night of 20 and 21st June, 1988 ? OPP
5. Whether the secrecy of the poll after the entire result was declared and number of votes was also declared in 14 polling stations has completely been lost and repoll amounted to corrupt practices ? OPP
6. Whether the votes on polling station Nos. 11 and 12 were improperly received, if so what is its effect ? OPP
7. Whether the Presiding Officer of polling stations Thathar (Banihal) and polling station Khanad (Ramnagar) were also beaten up and locked by the police and the revenue officials to rig the election in favour of respondent No. 1 on the poll day i.e. 6th June 1988 and it amounts to corrupt practices ? OPP
8. Whether the slogans used by respondent No. 1 and his supporters like, 'VOTE FOR ISLAM IN DEFENCE OF QURAN' amount to corrupt practices ? OPP
9. Whether the use of Pawan Hans, a state helicopter by respondent No. 1 and his supporters, ministers in the Government and the congress-I party General Secretary Ghulam Nabi Azad for the election campaign of congress-I amounted to corrupt practices ? OPP
10. Whether canvassing by Arun Govil who has acted as 'RAM' in Ramavarna serial by addressing public meeting at Udhampur and Katra amounted to corrupt practice ? OPP

11. Whether the counting of 3 polling stations of 20th June was done by the Secretary to the Chief Election Commission pertaining to Budan, Casote and Chanana in Gulabgarh segment which was illegal, if so what is its effect ? OPP
12. Whether during repolling at Gool Gulabgarh polling agents of the petitioner were beaten up at the instance of respondent No. 1 and polling stand ransacked and captured, if so what is its effect ? OPP
13. Whether the averments regarding alleged corrupt practices are vague, full particulars are not given, if so what is its effect ? OPP
14. Whether the allotment of symbol of hand to respondent No. 1 amounted to corrupt practice ? OPP

Under an order dated April 21, 1989 issue No. 3 was, however, recast as under :—

"Whether the authorities concerned shifted ballot boxes of 14 polling stations of Gool Gulab Garh segment to Rajouri which is outside the jurisdiction of Udhampur parliamentary constituency and afterwards shifted said boxes to Udhampur before bringing the same to Kathua, the venue of counting after three days from the date of poll at the instance of respondent No. 1 and whether result of the election has been materially affected by it? OPP

Issue Nos. 1, 2, 13 and 14 have been treated as preliminary issues and parties have led evidence in regard to the same.

I have heard the learned counsel for the parties and perused the record. Mr. J. P. Singh learned counsel appearing for the petitioner has taken only a legal plea that in accordance with Section 64-A of Representation of People Act Election Commission of India was not competent to order repoll of certain stations when counting of votes had completed and in this manner because of the illegally committed by the Commission for ordering of repoll of certain segments whole polling has become vitiated and the result declared on the basis of that polling became void. Mr. Bakshi learned counsel for respondent No. 1 has referred to Section 66 of the aforesaid Act and, according to him there was a direction of Election Commissioner for ordering of repoll before announcement of the result and as such repolling was ordered properly. His further plea in this regard is that both the parties had consented to repolling and order of Election Commission in that regard cannot be said to be invalid in any manner.

Section 64-A of the abovesaid Act reads as under :—

"(i) If at any time before counting of votes is completed any ballot paper used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained, the Returning Officer shall forthwith report the matter to the Election Commission.

(ii)

The other relevant provision requiring consideration is contained in section 66 which is as under :—

"When the counting of votes has been completed the Returning Officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare result of the election in the manner provided by this Act or the rules made thereunder."

It is admitted case of both the parties that the Returning Officer had completed the process of counting of votes and after that reference was made for repolling in certain segments of the constituency, Chief Election Commissioner of India on such recommendations passed order for a fresh poll of certain polling stations vide his order dated 25-6-1988. The words in Section 64-A of Representation of People Act, (Act hereafter,) "at any time before counting of votes is

completed" are very much pertinent. It is clear from these words that power of fresh poll at particular polling station can be exercised by Election Commissioner before counting of votes is completed. After the counting is complete, the Commission cannot order a repoll. Mr. Bakshi wants this Court to invoke the provisions contained in Section 66 of the Act as, according to him, there was a direction from Election Commission of India not to declare the result and in this manner the Returning Officer was within his rights not to declare the result even after counting of votes had taken place. I think Mr. Bakshi is not correct in his contention. There is nothing on record to show that there were instructions or directions to the Returning Officer by Election Commissioner not to declare the result. If such was the case there was hardly any reason for the Returning Officer to complete the process of counting. There is express provision in both the above referred Sections 64-A and 66 of the Act that the Returning Officer has to declare the result when counting of votes has been completed. There is thus a clear violation of the mandatory provision contained therein.

Mr. Singh wants me to hold that at the time of completion of counting of votes the petitioner had secured more votes than respondent No. 1 and he was to be declared as elected member but I think it will not be proper to do so when the case is being disposed of on a legal point.

In view of the violation committed by the Election Commission of India of the express provisions contained in Section 64-A of the Act repolling of certain segments of the constituency has become invalid and the election declared on that basis has also become void and it is held so. The Parliament for which said election was held has since been dissolved and new Parliament was subsequently constituted and as such no order can be passed either for repoll or for any other purpose. This petition is, therefore, disposed of with the abovesaid observations.

JAMMU,

Dated : 18th October, 1992.

Sd/-
Illigible

शुद्धिपत्र

नई दिल्ली, 25 अक्टूबर, 1993

आ. अ. 122:—आयोग के दोनों हिन्दी एवं अंग्रेजी अनुवादों के तारीख 9 मार्च, 1992 के आदेश सं. 76/उ.प्र.-वि.स./90 में क्रम संख्या 80 के सामने कालम संख्या 1 से 5 तक सभी वर्तमान प्रविष्टियों का लोप कर दिया जाए और शेष क्रम संख्याओं को तदनुसार संख्यांकित कर दिया जाए।

[संख्या 76/उ.प्र.-वि.स./90]

आदेश से,

बलवन्त सिंह, सचिव

CORRIGENDUM

New Delhi, the 25th October, 1993

O.N. 122.—In both English and Hindi versions of the Commission's order No. 76/UP-LA/90, dated 9th March, 1992, the existing entries against serial No. 80, under column Nos. 1 to 5 shall be deleted and the rest of the serial numbers shall be renumbered accordingly.

[No. 76/UP-LA/90]

By order,

BALWANT SINGH, Secy.

नई दिल्ली, 26 अक्टूबर, 1993

आ. अ. :- 123 - गोविन्दपुरा विधान सभा निर्वाचन क्षेत्र से मध्य प्रदेश विधान सभा के लिए फरवरी, 1990 में

हुए साधारण निर्वाचन में निर्वाचन लड़ने वाले अभ्यर्थी श्री तेजपाल सिंह, ए-2, पंजाबी बाग, गोविन्दपुरा, भोपाल, मध्य प्रदेश की लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क के अधीन निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहने पर जैसा कि उक्त अधिनियम और तदधीन बनाए गए नियमों द्वारा अनेकित है, भारत निर्वाचन आयोग की तारीख 7-4-1992 के आदेश सं. 76/म. प्र.-वि. स./91 (7) के द्वारा निरर्हित किया गया था ;

और उक्त श्री तेजपाल सिंह ने लेखा दाखिल करने में अपनी असफलता के कारण बताते हुए उन पर लगाई गई निरर्हता हटाने के लिए भारत निर्वाचन आयोग के सामने 13-10-1993 को एक अर्जी दाखिल की थी ;

और, अर्जी पर विचार करने के पश्चात् तथा इस मामले के सभी महत्वपूर्ण तथ्यों को देखते हुए भारत निर्वाचन आयोग ने लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 11 के द्वारा उक्त व्यक्ति का प्रयोग करते हुए तारीख 26-10-93 के अपने आदेश द्वारा उक्त अधिनियम की धारा 10क के अधीन तारीख 7-4-1992 को जारी किये गये आयोग के द्वारा उन पर लगाई गई निरर्हता को तारीख 26-10-1993 से हटा दिया गया है ;

अतः अब, उक्त श्री तेजपाल सिंह का नाम जो कि आयोग के तारीख 7-4-1992 की आदेश सं. 76/म. प्र.-वि. स./91 (7) को क्र. स. 96 पर है से हटा दिया गया समझा जाएगा।

[सं. 76/म. प्र. - वि. स./91]

आदेश से,

राम किशन, सचिव

New Delhi, the 26th October, 1993

O.N. 123.—In Whereas Shri Tejpal Singh, A-2 Punjabi Bagh, Govindpura, Bhopal, Madhya Pradesh, a contesting candidate for the general election to the Madhya Pradesh Legislative Assembly from 238-Govindpura assembly constituency held in February, 1990 was disqualified by the Election Commission of India vide its order No. 76/MP LA/91(7) dated 7-4-1992, under section 10-A of the Representation of the People Act, 1951 for failure to lodge any account of his election expenses as required by said Act and rules made thereunder :-

And whereas, the said Shri Tejpal Singh had submitted a petition dated 13-10-1993 before the Election Commission of India for removal of disqualification imposed on him, giving reasons for his failure to lodge the account;

And whereas, after considering the petition and taking into account all material facts of the case, the Election Commission of India, in exercise of the power conferred by Section 11 of the Representation of the People Act, 1951 has vide its order 26-10-1993 removed the disqualification imposed upon him by the Commission's order dated 7-4-1992, under section 10A of the said Act, with effect from 26-10-1993;

Now, therefore, the name of the said Shri Tejpal Singh appearing at Sl. No. 96 of said order, shall be deemed to have been omitted from the Commission's order No. 76/MP-LA/91(7), dated 7-4-1992.

[No. 76/MP-LA/91]

By Order,

RAM KISHAN, Secy.

